OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Travis Vieux at 937-224-3333 or email Travis at tjvieux@green-law.com.

Court of Appeals: Eleventh District, Geauga County

Case Name: Bucci v. Krotz
(2007-Ohio-4952)

Decided: September 21, 2007 (Posted September 24, 2007)

Issue: Summary Judgement in Motor Vehicle Accident Cases

Summary of Opinion: The Eleventh District found that under the facts and law of this case that summary judgement was inappropriate and given the factual determinations regarding duty and breach that in most motor vehicle negligence cases it would be.

Plaintiff Bucci was riding his motorcycle on a rural highway. He was behind a semi truck and two automobiles. The lead car was driven by the defendant Krotz. Krotz slowed to turn left as plaintiff signaled and attempted to pass the truck and two cars. Krotz turned into Bucci's path requiring him to break hard. He skidded into Krotz's vehicle, injuring both himself and Krotz.

Bucci sued Krotz for negligence in that she failed to use reasonable caution in making her turn. Bucci alleged that Krotz to look into her rearview mirror as is required by R.C. 4513.23 and that she violated R.C. 4511.39(A) by failing to use due care in making a turn. Krotz counter-sued alleging that Bucci was negligent. The trial court granted

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Krotz's motion for summary judgement and denied Bucci's. The trial court found that Krotz had not violated either of the traffic statutes cited by Bucci and that Bucci had violated R.C. 4511.27(A) in failing to give an sufficient signal that he was passing.

The appellate court reversed. Relying on *Wilfong v. Batdorf* (1983), 6 Ohio St.3d 100, the court found that determinations of the sufficiency of signaling under R.C. 4511.27(A) is a determination for the trier of fact. As to the issues of defendant's use of her rear view mirror and whether she used due care in turning, the court found that both were essential factual issues for a trier of fact. Relying on *Foulke v. Beogher* (2006), 166 Ohio App.3d 435, the court found that "questions concerning whether the conduct of a driver of a motor vehicle in the specific circumstances constituted a breach of duty of ordinary care are eminently matters of fact to be thoroughly developed at trial."

Court of Appeals: Eleventh District, Geauga County

Case Name: Bacon v. Fowler's Mill Inn
(2007-Ohio-4958)

Decided: September 21, 2007 (Posted September 24, 2007)

Issue: Winter No-Duty Rule, Open and Obvious

Summary of Opinion: The Eleventh District restated the rule that natural accumulations of ice and snow are of such a nature that property owners owe no duty to those on their property. Additionally, such a condition is an open and obvious hazard. Judge Trapp makes a valiant attempt in her concurrence to streamline these parallel rules to give guidance to lower courts, attorneys and clients.

Plaintiff Bacon arrived at the Fowler's Mill Inn on the evening of December 15, 2004. The weather was cold and Bacon immediately noticed that the parking lot was covered with a slick veneer of ice. Bacon put his truck into 4-wheel drive and parked in a spot close to the entrance. The manager of the Inn asked Bacon to move because the spot was on an incline and the manager was concerned that "people would slide into other people." Bacon moved his truck to the end of the parking lot. When he got out, he remarked that the ground was very slippery. Bacon tried walking along a fence to steady himself, but the plowed snow was too thick. Bacon then attempted to "shuffle" across the parking lot. He fell and injured his arm.

Bacon sued the Inn for negligence. He alleged that the Inn owed him a duty of care to

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remove unnatural accumulations of ice from the parking lot, they failed to do so, resulting in Bacon's injuries. The Inn filed a motion for summary judgement which the trial court granted.

The appellate court restated the law of Ohio that a business owner owes a business invitee a duty of ordinary care in maintaining the premises in a reasonably safe condition so that invitees are not subjected to unreasonable dangers. A business owner owes no duty to protect invitees from dangers which are "open and obvious." A business owner's duty of reasonable care does not extend to natural accumulations of snow and ice. However, where a business owner is actively negligent in permitting or creating an unnatural accumulation of snow and ice, the no-duty rule does not apply. Likewise, if a business owner has actual notice that a natural accumulation of snow and ice has created a substantially more dangerous condition than expected by reasonable knowledge, the business owner owes a duty to warn the invitee.

The court found there was no evidence that the snow and ice on parking lot of the Inn was "unnatural." Further, the plaintiff made clear from his actions that he was aware of the hazardous conditions. There was nothing about the conditions that was substantially more dangerous such that the Inn had a duty to warn. Even if the Inn did have a duty to warn, the manager's statements to the plaintiff about his concerns about people slipping would have been sufficient. Plaintiff's statements and actions also make clear that the hazard was open and obvious.

Judge Trapp, in her concurrence, argues for a bright line rule in snow and ice slip-and-fall cases. Concerned that the overlapping theories of open and obvious and the "winter no-duty" rule are confusing, she argues for a threshold question of whether the ice or snow is "natural." If it is natural, no duty exists. The plaintiff would be required to show that an intervening act of negligence perpetuated the anticipated hazard <u>and</u> made it more dangerous than anticipated by naturally occurring accumulation of snow and ice.

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